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# DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

FILE: B-214111

DATE: October 12, 1984

MATTER OF: Dynamic Science, Inc.

## DIGEST:

1. Agency's failure to follow regulation concerning postaward notification to unsuccessful offeror is a procedural deficiency which does not invalidate an otherwise proper award.
2. Protest alleging that agency's cost analysis was improper is denied where record indicates that agency's cost analysis had a reasonable basis and followed the provisions set forth in the RFP.
3. Contracting agency's analysis of proposals for cost realism involves the exercise of informed judgment and, therefore, GAO will not disturb a cost realism determination unless it is shown to lack a reasonable basis.

Dynamic Science, Inc. (DSI), protests the award of a cost-plus-fixed-fee (CPFF), level-of-effort contract to Rail Company (Rail) under request for proposals (RFP) No. N00019-83-R-0002 issued by the Naval Air Systems Command (Navy) for technical, engineering, logistic, and fiscal tracking support for the A-4 Weapons System Manager. DSI contends that the Navy failed to advise it of the reason it was excluded from the award and that the award to Rail was not in the government's best interest because DSI's best and final offer (BFO) was \$130,406 lower than Rail's.

We deny the protest.

The RFP provided that cost proposals would be evaluated with respect to reasonableness and realism and that the offeror's cost proposal would be evaluated by an examination of:

"a. Proposed direct and indirect rates as related to the Government's review of actual and projected rates (including escalation) for each labor category;

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"b. The adequacy and necessity for other direct costs proposed for consultants, travel, computers, etc.;

"c. The total estimated proposed cost as related to the Government's estimated cost;

"d. The proposed fee/profit;

"e. The consistency of the offeror's cost proposal with his accounting system; and

"f. Comparison of labor rates proposed to the labor skills required for performance."

The RFP provided that "[t]he selection for award will be made from those offerors who are included in the acceptable category and will be based on the lowest, realistic, and reasonably priced offer."

Twelve firms submitted proposals. The procurement review board (PRB) evaluated the initial technical and cost proposals. Eight of the firms, including DSI, were determined to be in the competitive range. These firms were requested to provide BFO's. The requests summarized cost and technical concerns in the offerors' proposals.

The BFO's of the seven firms which were still acceptable after another technical evaluation were then evaluated with regard to cost reasonableness and realism. The results were as follows:

<u>"Contractor</u>	<u>Initial Proposal</u>	<u>Contractor Proposed BFO</u>	<u>NAVY Adjusted Amount</u>
A	\$948,556.00	\$866,985.00	\$903,712.00
B	982,693.00	470,111.00	786,365.00
C	730,557.00	557,318.00	719,767.00
D	718,355.00	706,602.00	710,584.00
E	741,216.00	687,902.00	687,902.00
DSI	516,135.00	527,108.00	665,923.00
RAIL	966,327.00	657,519.00	657,663.00"

The Navy adjusted amounts reflected Defense Contract Audit Agency (DCAA) recommendations and other adjustments deemed necessary to project the total actual costs of the proposed

CPFF contract. Since Rail's adjusted amount was lowest and its proposal was technically acceptable, the PRB recommended that Rail be awarded the contract.

With regard to DSI's contention that the Navy did not advise it of the reason why it did not receive the award, the Navy concedes that the postaward notices to unsuccessful offerors did not contain all the information required by Defense Acquisition Regulation (DAR) § 3-508.3(a)(v), reprinted in 32 C.F.R. pts. 1-39 (1983). However, the Navy states that the information was provided at the time of DSI's debriefing. Further, our Office has held that post-award notification requirements such as those contained in DAR § 3-508.3 are procedural in nature and failure to comply with them provides no legal basis for disturbing an otherwise valid award. See Kan-Du Tool & Instrument Corp., B-210819, June 21, 1983, 83-2 C.P.D. ¶ 12.

The primary issue concerns the propriety of the cost evaluation. DSI contends that the Navy arbitrarily raised its proposed costs. The Navy argues that DSI's cost proposal was evaluated consistent with section "M" of the solicitation.

DSI argues that it was not in the best interest of the government to award to Rail at a proposed cost \$130,406 higher than DSI, especially where DSI was the incumbent contractor on at least 65 percent of the work considered in this contract. With respect to the cost advantages of retaining the incumbent, which refers to not having to phase in a new contractor, the RFP did not list that as an evaluation factor. The decision whether to include such an evaluation factor in a solicitation is discretionary; while phase-in costs may be considered, contracting agencies may choose to avoid considering such costs because advantages accruing from incumbency may have a detrimental effect on obtaining competition and innovative approaches. See Group Hospital Service, Inc. (Blue Cross of Texas), 58 Comp. Gen. 263 (1979), 79-1 C.P.D. ¶ 245. Since the RFP did not provide for evaluation of phase-in costs here, the agency could not evaluate them. Rockwell International Corporation, 56 Comp. Gen. 905 (1977), 77-2 C.P.D. ¶ 119; Informatics, Inc., B-194734, Aug. 22, 1979, 79-2 C.P.D. ¶ 144.

DSI objects to the Navy's refusal to discuss during negotiations its proposed costs for the Foreign Military Sales (FMS) financial analyst, the technical typist and its consultant. In the BFO proposed by DSI, the FMS financial analyst labor rate of \$10.40 was reviewed by DCAA, which advised that this reduced rate was proposed in anticipation of unpaid overtime; the actual labor rate was \$13. In addition, DSI proposed 520 hours less than required by the solicitation for the technical typist even though this was identified as a concern in the Navy's request for a BFO. Finally, the consultant rates proposed by DSI's subcontractor, t. g. Bauer Associates, Incorporated (t.g.B), were identified by the Navy as unrealistically low. By using the adjusted labor rate of \$13 for the FMS financial analyst, adding 520 technical typist hours subcontracted to t.g.B and by increasing t.g.B's fully burdened consultant rates to a realistic level (\$34.32), the Navy adjusted the cost of DSI's proposal to \$665,923. The additional costs for the technical typist were approximately \$11,300; for the FMS financial analyst, approximately \$24,150; and for the consultant, approximately \$103,300.

We have held that it is improper to take cost proposals for cost-reimbursement contracts at face value and that the government must make an independent determination of cost realism. Group Operations, Incorporated, 55 Comp. Gen. 1315 (1976), 76-2 C.P.D. ¶ 79.

Our review of cost realism assessments is limited to a determination of whether an agency's cost evaluation was reasonably based and was not arbitrary. Robert E. Derecktor of Rhode Island, Inc.; Boston Shipyard Corp., B-211922; B-211922.2, Feb. 2, 1984, 84-1 C.P.D. ¶ 140. We have consistently held that a contracting agency's analysis of competing cost proposals involves the exercise of informed judgment and is entitled to great weight because the agency is in the best position to determine the realism of costs under the proposed technical approaches. Ecology and Environment, Inc., B-209516, Aug. 23, 1983, 83-2 C.P.D. ¶ 229; SETAC, Inc., 62 Comp. Gen. 577 (1983), 83-2 C.P.D. ¶ 121. Costs should be examined in sufficient depth to arrive at a valid "should cost" estimate for the proposal. Southern California Ocean Studies Consortium, 56 Comp. Gen. 725 (1977), 77-1 C.P.D. ¶ 440.

We believe the Navy's cost analysis was reasonable. The evaluation of DSI's FMS financial analyst labor rate at \$13 was used by the Navy in reliance on the DCAA advice and

the fact that DSI did not justify in its BFO the use of the \$10.40 rate it claimed. DSI made no mention of unpaid overtime in its proposal and DSI did not justify the lower than actual rate nor provide copies of its employees' agreements to work at less than the actual rate in the BFO. Therefore, in the absence of such information, the Navy's decision to evaluate at the actual rate of \$13 was reasonable. The record does not support DSI's contention that the Navy evaluated Rail's FMS logistics analyst in a different and more favorable manner than that of DSI. The actual hourly rate proposed by Rail was used in the Navy's evaluation of its proposal.

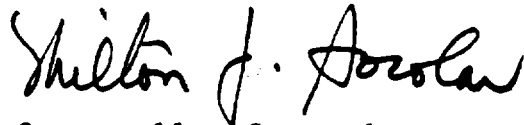
Concerning the technical typist, the record indicates that the Navy added 520 technical typist hours to DSI's proposal at the same rate as the remaining hours which DSI had subcontracted. DSI contends that the 520 technical hours were included in its overhead rate. However, the RFP had requested that all the labor hours proposed be included in direct costs. Since DSI did not propose an additional 520 hours for technical typist, the Navy acted reasonably in adding these hours to its proposal. DSI contends that even if the Navy was correct in evaluating the technical typist hours as direct costs, a corresponding reduction in the 80-percent overhead rate was required. The Navy states that the information necessary for such a calculation did not appear in DSI's BFO and could not be solicited after BFO's were received since negotiations were closed. The Navy states that in any case it was not clear that the overhead rate would necessarily be reduced as a result.

The consultant rates proposed by DSI's subcontractor were identified by the Navy as unrealistically low on the basis of its experience with similar contracts and consultants. In its request for its BFO, DSI was asked to justify its proposed direct labor rates and its subcontractor's general and administrative (G&A) and overhead rates. Such justification was not submitted by DSI. Rather, the firm stated that the hourly rates of the proposed DSI personnel were in keeping with professional salaries in the Washington, D.C., area for the labor categories listed in the RFP. DSI points to a consultant agreement held by its subcontractor but this agreement was not included in its BFO and the government could not request such information after the BFO's were received. The Navy states that it added overhead to the consultant charges in an attempt to arrive

at a realistic rate. Therefore, the Navy states that its use in its evaluation of the \$34.32 adjusted rate for the consultant charges was a reflection of its estimation, based on its experience with similar contracts and consultants, that the rate was more "reasonable and realistic" than the one proposed by DSI. The Navy's use of the \$34.32 adjusted rate resulted in approximately \$103,324 being added to its cost proposal. The Navy states that although DSI's subcontractor's consultant costs as proposed and evaluated were approximately \$83,355, DSI failed to include its G&A and fee, which was required because t.g.B was proposed as a subcontractor.

Upon reviewing the entire record, we believe the Navy's cost evaluation was reasonably based and not arbitrary and the Navy's refusal to conduct further discussions with DSI following receipt of its BFO was proper.

The protest is denied.

*for*   
Comptroller General  
of the United States